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2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 * * *

6 TRELLIS QUINN,

7 Plaintiff,

8 v.

9 JULIO CALDERIN, *et al.*,

10 Defendants.

Case No. 2:19-cv-00442-MMD-DJA

ORDER

11 **I. SUMMARY**

12 *Pro se* Plaintiff Trellis Quinn, who is currently incarcerated at South Desert
13 Correctional Center ("SDCC"), brings this civil rights action pursuant to 42 U.S.C. § 1983.
14 (ECF No. 6.) After screening Quinn's complaint pursuant to 28 U.S.C. § 1915A, the Court
15 dismissed five named defendants, but allowed claims to proceed against the remaining
16 ten defendants. (ECF No. 5.) Before the Court is Defendants partial motion to dismiss.¹
17 (ECF No. 19 ("Motion").) As further explained below, the Court will grant the Motion in
18 part, and will deny it in part.

19 **II. BACKGROUND**

20 The following allegations are adapted from the Complaint. Quinn sues multiple
21 defendants for events that took place while he was incarcerated at High Desert State
22 Prison ("HDSP"). After screening, the remaining Defendants in this case are institutional
23 chaplain Julio Calderin; HDSP Warden Brian Williams; Associate HDSP Warden Jennifer
24 Nash; former Nevada Department of Corrections Director James Dzurenda; HDSP
25 correctional officers Jesus Leavitt, Bruce Martin, James Sutton, and Arnold Tombs; and
26

27
28 ¹Quinn did not respond to the Motion. Because of Quinn's *pro se* status, the Court
determines it is proper to evaluate the Motion on its merits despite Quinn's failure to
respond.

1 HDSP caseworkers Teddy Miro and Dean Whirley. For these claims, Quinn seeks
2 monetary and injunctive relief.

3 **A. First Amendment and RLUIPA Claims**

4 Quinn alleges that Defendants violated his right to free exercise of religion under
5 the First Amendment and violated the Religious Land Use and Institutionalized Persons
6 Act of 2000 (“RLUIPA”) because he was denied permission to attend Jumah services until
7 December 7, 2018, without any basis for the denial. (ECF No. 6 at 7.) Quinn alleges that
8 he is a devout Muslim and that Jumah services are essential to his religious practice. (*Id.*
9 at 4.) Specifically, Quinn alleges that Defendants Calderin, Dzurenda, Nash, and Williams
10 each participated in denying him permission to attend Jumah services. (*Id.* at 7.)

11 The Court permitted Quinn’s First Amendment free exercise and RLUIPA claims
12 to proceed against Defendants Calderin, Dzurenda, Nash, and Williams. (ECF No. 5 at
13 5.)

14 **B. Retaliation, Deliberate Indifference, Conditions of Confinement**

15 Quinn also alleges a First Amendment retaliation claim and Eighth Amendment
16 claims for unacceptable conditions of confinement and deliberate indifference to a serious
17 medical need. (ECF No. 6 at 5-9.) On November 11, 2018, Quinn slipped on a staircase
18 and claims to have fractured his ankle. (*Id.* at 5.) Quinn alleges his shoes were wet
19 because water from a leaky water fountain leaked onto the floor. (*Id.*) Quinn alleges that
20 Defendants Leavitt, Martin, Miro, Sutton, and Tombs knew about the leaking fountain for
21 several months but refused to do anything about it. (*Id.* at 8.) Quinn further alleges that
22 even though Defendants Dzurenda, Leavitt, Martin, Miro, Sutton, Tombs, and Whirley
23 knew that he would not be able to pick up his meds or go to the dining hall, they refused
24 to order that his meds and food be brought to him. (*Id.* at 7.) As a result, Quinn alleges
25 he did not eat for three days. (*Id.*) Quinn also argues that because no one performed an
26 x-ray, his ankle is healing improperly. (*Id.* at 9.) Quinn alleges that Defendants acted out
27 of retaliation because he filed an emergency medical grievance for his foot injury on
28 November 11. (*Id.* at 7.)

1 **III. LEGAL STANDARD**

2 A court may dismiss a plaintiff's complaint for "failure to state a claim upon which
3 relief can be granted." Fed. R. Civ. P. 12(b)(6). A properly pleaded complaint must provide
4 "a short and plain statement of the claim showing that the pleader is entitled to relief."
5 Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While
6 Rule 8 does not require detailed factual allegations, it demands more than "labels and
7 conclusions" or a "formulaic recitation of the elements of a cause of action." *Ashcroft v.*
8 *Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555). "Factual allegations
9 must be enough to rise above the speculative level." *Twombly*, 550 U.S. at 555. Thus, to
10 survive a motion to dismiss, a complaint must contain sufficient factual matter to "state a
11 claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550
12 U.S. at 570).

13 In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to
14 apply when considering motions to dismiss. First, a district court must accept as true all
15 well-pleaded factual allegations in the complaint; however, legal conclusions are not
16 entitled to the assumption of truth. *See id.* at 678. Mere recitals of the elements of a cause
17 of action, supported only by conclusory statements, do not suffice. *See id.* Second, a
18 district court must consider whether the factual allegations in the complaint allege a
19 plausible claim for relief. *See id.* at 679. A claim is facially plausible when the plaintiff's
20 complaint alleges facts that allow a court to draw a reasonable inference that the
21 defendant is liable for the alleged misconduct. *See id.* at 678. Where the complaint does
22 not permit the Court to infer more than the mere possibility of misconduct, the complaint
23 has "alleged—but it has not show[n]—that the pleader is entitled to relief." *Id.* at 679
24 (alteration in original) (internal quotation marks and citation omitted). That is insufficient.
25 When the claims in a complaint have not crossed the line from conceivable to plausible,
26 the complaint must be dismissed. *See Twombly*, 550 U.S. at 570.

27 Although the standard for screening an *in forma pauperis* complaint under 28
28 U.S.C. § 1915A is the same as the standard used for a dismissal for failure to state a

claim under Federal Rule of Civil Procedure 12(b)(6), district courts may consider the issues again with the benefits of defendants' briefing. *See Hernandez v. Aranas*, 2020 WL 569347, at *3 (D. Nev. Feb. 4, 2020).

IV. DISCUSSION

Defendants now move to partially dismiss the Complaint. First, Defendants argue that monetary damages are unavailable against Defendants in their official capacities under 42 U.S.C. § 1983. Defendants also assert that Quinn's RLUIPA claim is moot. Next, Defendants argue that the Court should dismiss Quinn's First Amendment retaliation claim because there are no allegations Defendants' conduct was "substantially" motivated by Quinn's protected conduct. Finally, Defendants argue the Court should also dismiss Quinn's deliberate indifference to a serious medical need claim because there is no evidence Defendants had notice of his injury yet failed to respond.

The Court will address each argument in turn.

A. Monetary Damages

Defendants first argue that Quinn may not seek monetary damages against Defendants in their official capacities. (ECF No. 19 at 5.) Defendants do not make any qualified immunity arguments. The Court agrees that "state officials sued in their official capacities cannot be liable for monetary damages because they are not 'persons' under § 1983." *Rexroad v. Nevin*, Case No. 2:17-cv-01629-JCM-NJK, 2019 WL 1645984, at *3 (D. Nev. Apr. 16, 2019). However, prisoners may seek monetary damages against government officials in their individual capacity "for an allegedly unlawful official action" if a reasonable official "would understand that what he is doing violates [a clearly established] right." *Anderson v. Creighton*, 483 U.S. 635, 639-40 (1987).

Quinn may not be awarded damages for his § 1983 claims against Defendants in their official capacities, but he may still seek to prove that each Defendant is individually liable. Accordingly, the Court rejects Defendants' dismissal argument as to monetary damages.

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1 **B. RLUIPA**

2 Defendants next argue that the Court should dismiss Quinn’s RLUIPA claim as
3 moot. Quinn alleges that Defendants Calderin, Dzurenda, Nash, and Williams denied him
4 access to Jumah services over his repeated requests for over two years. (ECF No. 6 at
5 4-7.) Defendants first argue that in 2018, Quinn has had access to Jumah services since
6 2018, so the HDSP and NDOC officials have voluntarily ceased any offending conduct.
7 (ECF No. 19 at 5-6.) Defendants also argue that because Quinn has been transferred to
8 SDCC, there is no prospective harm that injunctive relief could cure. (*Id.*) The Court
9 agrees that Quinn has not alleged a continuing harm that injunctive relief could remedied,
10 but will grant Quinn leave to amend to supplement his Complaint if he has a reasonable
11 expectation the offending conduct could occur.

12 When institutional defendants voluntarily change an allegedly infringing policy, an
13 inmate’s RLUIPA claims are generally mooted. *See Maloney v. Ryan*, 711 F. App’x 372,
14 373 (9th Cir. 2017). However, while the Court agrees that Defendants appear to have
15 voluntarily permitted Quinn to attend Jumah services, the offending conduct in this
16 instance does not appear to have been a part of a policy that NDOC or HDSP changed.
17 Rather, Quinn appears to allege that Defendants’ actions were not justified by any policy
18 and were instead done without any basis. “We presume that a government entity is acting
19 in good faith when it changes its policy, but when the Government asserts mootness
20 based on such a change it still must bear the heavy burden of showing that the challenged
21 conduct cannot reasonably be expected to start up again.” *Rosebrock v. Mathis*, 745 F.3d
22 963, 971 (9th Cir. 2014). Because Defendants are effectively unrestrained from deciding
23 to again prevent Quinn from accessing Jumah services, the Court will not moot the
24 RLUIPA claim on this ground. *See id.* at 971-72.

25 Instead, the Court will consider whether Quinn has alleged he has a reasonable
26 expectation that his access to Jumah services will again be restricted. Typically, an
27 inmate’s release from custody moots an RLUIPA claim. *See Jones v. Williams*, 791 F.3d
28 1023, 1031 (9th Cir. 2015). Because the plaintiff “has been removed from the environment

1 in which he was subjected to the alleged RLUIPA violations . . . any injunctive relief
2 ordered in [his] favor would have no practical impact on his rights and would not redress
3 in any way the injury he originally asserted.” *Id.* However, when an inmate has not been
4 released but has merely been transferred, his injunctive claims are not necessarily moot.
5 See *Walker v. Beard*, 789 F.3d 1125, 1131-32 (9th Cir. 2015) (reasoning that whether an
6 inmate’s claim for injunctive relief is moot depends on whether there was a reasonable
7 expectation he would be subject to the offending conduct again); see also *Friedman v.*
8 *Aranas*, Case No. 3:17-cv-00433-MMD-WGC, 2019 WL 7597663, at *7 (D. Nev. Dec. 27,
9 2019) (declining to extend the reasoning in *Jones* to a case where a prisoner had been
10 transferred but not released from custody). RLUIPA claims have not survived an inmate’s
11 transfer to a new facility when the inmate fails to demonstrate there was a reasonable
12 expectation the offending conduct would recur. See, e.g., *Harris v. Escamilla*, 736 F.
13 App’x 618 (9th Cir. 2018) (finding a transferred inmate’s RLUIPA claim was moot because
14 he did not allege “any statewide policy impacting religious activities that would affect him
15 at the new facility”); *Jackson v. Sullivan*, 692 F. App’x 437, 439-40 (9th Cir. 2017) (finding
16 a transferred inmate’s RLUIPA claims moot when he had not alleged any adverse
17 consequences at his new facility and that the offending conduct was unlikely to continue
18 even if he were to be transferred back).

19 Quinn has not alleged that he is likely to return to HDSP or that the Defendants’
20 refusal to allow him access to Jumah services was part of a system-wide policy. In fact,
21 he alleges the opposite—that there was no reason to deny him access to the Jumah
22 services. Because Quinn has not argued the offending conduct is likely to recur, the Court
23 will dismiss his RLUIPA claim as moot. However, the Court will grant Quinn leave to
24 amend to add any allegation that he has a reasonable expectation he may be excluded
25 from Jumah services in the future.

26 **C. First Amendment Retaliation**

27 Defendants argue the Court should dismiss Quinn’s retaliation claim because he
28 fails to allege that any Defendant had notice of his injury; consequently, Defendants argue

1 there is no causal connection between Quinn’s emergency medical grievance and the
2 alleged adverse action. (ECF No. 19 at 6.) An inmate alleging retaliation must show “(1)
3 a state actor took some adverse action . . . (2) because of (3) [the] prisoner’s protected
4 conduct, . . . that such action (4) chilled [his] exercise of his First Amendment rights, and
5 (5) the action did not reasonably advance a legitimate correctional goal.” *Shepard v.*
6 *Quillen*, 840 F.3d 686, 688 (9th Cir. 2016) (quoting *Rhodes v. Robinson*, 408 F.3d 559,
7 567-68 (9th Cir. 2005)). In their Motion, Defendants argue only that Quinn has not
8 satisfactorily pleaded a set of facts that would support the second element.

9 The Court agrees that a causal connection must exist between Quinn’s protected
10 conduct and an adverse action to ultimately sustain a claim for retaliation. *See Rhodes v.*
11 *Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005). However, “[b]ecause direct evidence of
12 retaliatory intent rarely can be pleaded in a complaint, allegation of a chronology of events
13 from which retaliation can be inferred is sufficient to survive dismissal.” *Watison v. Carter*,
14 668 F.3d 1108, 1114 (9th Cir. 2012). Quinn argues that Defendants Dzurenda, Leavitt,
15 Martin, Miro, Sutton, Tombs, and Williams all knew his ankle was injured but refused to
16 bring him food or medication in his cell because he filed a grievance complaining of lack
17 of proper medical care, and that as a result he was unable to eat for three days. (ECF No.
18 6 at 8-9.) Under *Watison*, Quinn may infer a causal connection from the chronology of
19 these events—he filed his emergency medical grievance on November 11 and alleged
20 suffered the retaliatory consequences for that action for the next three days. (*Id.*) While
21 courts have found that inmates’ retaliation claims against wardens for actions of their
22 subordinates require some allegations of either “personal involvement” or other specific
23 knowledge, it is unreasonable to require Quinn at the pleading stage to prove that each
24 Defendant had actual knowledge of his injury and the grievance he filed. *See, e.g.,*
25 *Thomas v. Solano*, Case No. CV 18-8707-CAS (JEM), 2021 WL 1556540, at *10 (C.D.
26 Cal. Jan. 29, 2021) (citing *Hydrick v. Hunter*, 669 F.3d 937, 942 (9th Cir. 2012)). Quinn
27 lists each Defendant’s name and alleges that they became aware of his injury on
28 November 11 “because Plaintiff notified them all.” While it may be the case that Quinn will

1 not be able to support this allegation with evidence, his allegation is sufficient at the
2 pleading stage.

3 Accordingly, the Court will deny the Motion as to Quinn's First Amendment
4 retaliation claim.

5 **D. Deliberate Indifference to a Serious Medical Need**

6 Defendants also argue the Court should dismiss Quinn's Eighth Amendment claim
7 alleging that Defendants Dzurenda and Williams were deliberately indifferent to a serious
8 medical need. (ECF No. 19 at 7-8.) Defendants again argue that Quinn has not sufficiently
9 alleged Defendants Dzurenda or Williams had any knowledge about Quinn's ankle injury.
10 (*Id.* at 8.) To show a prison official was deliberately indifferent, the plaintiff must prove the
11 official "knows of and disregards an excessive risk to inmate health or safety." *Farmer v.*
12 *Brennan*, 511 U.S. 825, 837 (1994). The official must be aware of the facts from which
13 they could infer that a substantial risk of serious harm exists, and the official must actually
14 draw the inference. *Id.*

15 Although Quinn will ultimately need to establish that Defendants were "aware of
16 facts from which the inference could be drawn that a substantial risk of serious harm
17 exists," the facts Quinn pleaded in his Complaint are sufficient at this stage. Quinn states
18 that he called a "man-down" and was issued crutches on the day of the incident. (ECF
19 No. 6 at 5.) He further states that he filed an emergency medical grievance (*id.*), and that
20 he informed his nurse, Dzurenda, and Williams that he needed an x-ray for a suspected
21 fracture, but never received one (*id.* at 9). Taking these allegations as true, construing the
22 Complaint liberally because Quinn is *pro se*, and considering the facts in the light most
23 favorable to Quinn, the Court will deny the Motion as to Quinn's deliberate indifference to
24 a serious medical need claim.

25 **E. Leave to Amend**

26 The Court has discretion to grant leave to amend and should freely do so "when
27 justice so requires." Fed. R. Civ. P. 15(a); *see also Allen v. City of Beverly Hills*, 911 F.2d
28 367, 373 (9th Cir. 1990). Nonetheless, the Court may deny leave to amend if it will cause:

1 (1) undue delay; (2) undue prejudice to the opposing party; (3) the request is made in bad
2 faith; (4) the party has repeatedly failed to cure deficiencies; or (5) the amendment would
3 be futile. *See Leadsinger, Inc. v. BMG Music Publ'g*, 512 F.3d 522, 532 (9th Cir. 2008).

4 As stated above, the Court will grant Quinn leave to amend his RLUIPA claim.
5 Because the case is in the relatively early stages, the Court finds there is little risk of
6 undue delay or prejudice to Defendants. If Quinn can state a reasonable expectation that
7 he will again be denied access to Jumah services, he is given leave to supplement his
8 Complaint.

9 **V. CONCLUSION**

10 The Court notes that the parties made several arguments and cited to several
11 cases not discussed above. The Court has reviewed these arguments and cases and
12 determines that they do not warrant discussion as they do not affect the outcome of the
13 motions before the Court.

14 It is therefore ordered that Defendants' partial motion to dismiss (ECF No. 19) is
15 granted in part and denied in part as specified herein.

16 It is further ordered that if Quinn wishes to amend his RLUIPA claim, he must file
17 an amended complaint within 30 days from the date of entry of this order.

18 The Clerk of Court is directed to send Quinn the approved form for filing a § 1983
19 complaint, instructions for the same, and a copy of his original complaint (ECF No. 6). If
20 Quinn chooses to file an amended complaint, he must use the approved form and he
21 must write the words "First Amended" above the words "Civil Rights Complaint" in the
22 caption. Any amended complaint will be considered the operative complaint in this case,
23 so Quinn must include every allegation from his original screened complaint (ECF No. 6)
24 that was allowed to proceed.

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1 It is further ordered that if Quinn does not file an amended complaint within 30 days
2 of the date of this order, this action shall proceed on the original complaint (ECF No. 6),
3 the Court's original screening order dated December 23, 2019 (ECF No. 5), and without
4 the RLUIPA claim as specified herein.

5 DATED THIS 24th Day of June 2021.

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9 MIRANDA M. DU
10 CHIEF UNITED STATES DISTRICT JUDGE
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